

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES

VS.

CRIMINAL ACTION NO. 5:07-CR-17(DCB)(FKB)
CIVIL ACTION NO. 5:15-cv-15(DCB)

CHARLES EDWARD PRICE

ORDER

This cause is before the Court on the defendant Charles Edward Price's Motion to Correct Sentence pursuant to 28 U.S.C. § 2255 (**docket entry 465**). From a review of the claims raised in the instant motion, the Court concludes that the motion is successive within the meaning of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and United States v. Orozco-Ramirez, 211 F.3d 862, 867 (5th Cir. 2000). Therefore, as the Court previously instructed the defendant, he must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). A three-judge panel of the court of appeals must first determine whether this Court should consider the instant motion. Id. § 2244(b)(3)(B). The panel will authorize the filing of a second or successive motion only upon a prima facie showing that the motion is based on: (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the offense; or (2) a new rule of constitutional law,

made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. See id. § 2244(b)(3)(C), 2255. In this case, the Fifth Circuit has not issued the requisite order authorizing this Court to consider the successive motion to vacate.

Therefore, the Court shall construe the instant action as a second or successive motion to vacate filed under 28 U.S.C. § 2255, and shall DISMISS the action without prejudice pending review by a three-judge panel of the court of appeals.

Accordingly,

IT IS HEREBY ORDERED that the defendant's Motion to Correct Sentence pursuant to 28 U.S.C. § 2255 (**docket entry 465**) is DISMISSED WITHOUT PREJUDICE;

FURTHER ORDERED that the defendant **must file in the Fifth Circuit Court of Appeals a motion** pursuant to 28 U.S.C. § 2244(b)(2) within 30 days from the date of entry of this Order, and if he fails to file such a motion within that time, an order will be entered denying authorization.

SO ORDERED, this the 22nd day of September, 2016.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE